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MEMO ENDORSED

March 15, 2006

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BY HAND

The Honorable Kenneth M. Karas
United States District Judge
Daniel Patrick Moynihan United States Court House
500 Pearl Street, Room 920
New York, New York 10007

Re: ***Tiffany (NJ) Inc. and Tiffany and Company v. eBay Inc. - 04 Civ. 4607 (KMK)***

Dear Judge Karas:

We represent plaintiffs Tiffany (NJ) Inc. and Tiffany and Company (collectively, "Tiffany") in the above-captioned matter. We write in response to R. Bruce Rich's letter to Your Honor, dated March 10, 2006, which complained about Tiffany's statements in the press regarding the sale of counterfeit items on eBay and requested a conference with the Court to provide an update of pre-trial proceedings and to discuss scheduling.

We join with defendant in seeking a conference at Your Honor's earliest convenience. We note that there are two outstanding matters before Your Honor that had been filed before Judge Buchwald, namely defendant's contested motion to amend its answer to assert an additional affirmative defense and plaintiff's discovery dispute with the non-party witness, Google, Inc.

We take strong issue, however, with defendant's complaints concerning Tiffany's interaction with the press. In the first instance, Tiffany's right to communicate with the press is protected by the First Amendment. This case will be tried to the Court, not a jury (defendant's reference to it being a "potential jury case" notwithstanding). As to the two instances which defendant cites, the quoted statement from me to the press shortly after filing of the case in June 2004 is entirely accurate. We note Mr. Rich never complained of this quote at any time in the preceding 18 months, despite ample opportunity to do so. And, while defendant objects to the fact that Tiffany recently publicized police raids in the United Kingdom against individuals who were selling counterfeit Tiffany merchandise on eBay, Tiffany has a clear right to advise the public of newsworthy events and to warn it of the extent of counterfeit Tiffany merchandise being offered for sale on eBay.

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It is in the public's interest that this case be tried as soon as possible and we look forward to meeting with Your Honor to discuss a schedule towards that end.

Respectfully submitted,

James B. Swire

cc: R. Bruce Rich, Esq.

The parties are directed to appear at a conference on APRIL 19, 2006 at 2:30pm. The Parties should be prepared to discuss the media issues, as well as the two outstanding motions. Thus, the Parties are directed to advise counsel for Google to appear at the conference as well.

SO ORDERED

KENNETH M. KARAS U.S.D.J.

3/20/06

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March 10, 2006

BY HAND

The Honorable Kenneth M. Karas
United States District Judge
Daniel Patrick Moynihan United States Court House
500 Pearl Street, Room 920
New York, New York 10007

Re: Tiffany (NJ) Inc. and Tiffany and Company v. eBay Inc., 04 Civ. 4607 (KMK)

Dear Judge Karas:

We represent defendant eBay Inc. ("eBay") in the above-captioned matter, which was reassigned to Your Honor after Judge Buchwald recused herself from this action in October of last year. We are writing to request an early date for a conference with the Court to discuss two subjects: (i) the persistent press campaign engaged in by Tiffany with the apparent purpose of trying this case in the press rather than in this Court, and (ii) a schedule for summary judgment briefing.

1. From the outset of this proceeding, Tiffany has taken its case – such as it is – to the press. Thus, on June 21, 2004, just days after the filing of this lawsuit, Tiffany's lead counsel, Mr. Swire, was quoted in the press to the effect that "his attempts to settle this matter 'on a business-like basis without having to go to Court'" had gone "unanswered" – a claim that, like so many of Tiffany's succeeding statements to the press, simply does not comport with the facts. See Jennifer Waters & Bambi Francisco, Tiffany Sues eBay in Trademark Spat, CBS MarketWatch, June 21, 2004 (copy annexed).

In recent weeks, Tiffany and its counsel have resorted to their press campaign with renewed energy, despite the fact that no newsworthy events in the litigation have transpired. By way of example, just this week, Tiffany issued a press release (copy annexed) concerning a seizure of counterfeit Tiffany goods in the United

Kingdom. Tiffany took the occasion to make a number of egregious misrepresentations relating to the instant suit and the evidence that has been developed through the discovery process.

While both this law firm and eBay are firmly committed to principles of free speech, we are at the same time concerned in this potential jury case over "the possibility that media coverage will become so intense that [eBay's] right to have the issues adjudicated fairly will be threatened." Koster v. Chase Manhattan Bank, 93 F.R.D. 471, 482 n.22 (S.D.N.Y. 1982); see also Doe v. Kohn Nast & Graf, P.C., 866 F. Supp. 190, 195 n.1 (E.D. Pa. 1994) ("I find it a source of some regret that in this day and age, the vogue appears to be that lawyers seem to be unable to resist corralling a press conference, inviting all the media, both paper and electronic, to trumpet the alleged virtues of their case before the jury has been impaneled. Too many lawyers are trying to try their cases in that arena rather than the proper forum for getting to the truth, within the bounds of due process and fair play.").

We accordingly would appreciate the opportunity to meet with the Court to get some guidance on this important matter.

2. As the parties have not yet had the opportunity to appear before Your Honor, such a conference could also serve the salutary purposes of educating the Court about the case, bringing the Court up-to-date on the status of pre-trial proceedings, and, hopefully, proposing to the Court a briefing schedule for summary judgment, as eBay believes that the case is ripe for adjudication on that basis. We have been in discussion with Tiffany's counsel concerning such scheduling.

We will await word from your chambers concerning this matter and would be pleased to provide the Court with further background information should the Court so desire.

Respectfully submitted.

R. Bruce Rich

RBR/mjt
Encl.
cc: James B. Swire, Esq.